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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-FILED - 3/14/07

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FREEPORT PARTNERS, LLC,
Derivatively on Behalf of Nominal Defendant
NETOPIA INC.

C-04-3522 (RMW)

Plaintiff,
v.

STIPULATION AND ~~PROPOSED~~
ORDER OF VOLUNTARY
DISMISSAL WITH PREJUDICE

ALAN B. LEFKOF, et al.,

Defendants,

and

NETOPIA, INC.,

Nominal Defendant.

-----X
JOHN LABANSKY,
Derivatively on Behalf of Nominal Defendant
NETOPIA INC.

C-04-4016 (RMW)

Plaintiff,

v.

REESE JONES, et al.,

Defendants,

and

NETOPIA, INC.,

Nominal Defendant.
-----X

WHEREAS, the above-captioned actions are shareholder derivative actions brought on behalf of nominal defendant Netopia, Inc. ("Netopia" or "the Company") against certain of the Company's officers and directors (the "Federal Actions");

WHEREAS, two shareholder derivative actions containing substantially similar allegations and alleging substantially similar claims were also filed in the Alameda County Superior Court ("the State Actions");

WHEREAS, to avoid inefficiency and duplicative litigation, the parties previously agreed to proceed with the State Actions only, and to seek a stay of the Federal Actions;

WHEREAS, on November 22, 2004, a Stipulation and Order Consolidating Actions, Appointing Lead Counsel, and Related Matters, establishing a case management plan for prosecution of all of the derivative claims was entered in the Alameda County Superior Court;

WHEREAS, the parties filed a Stipulation in this Court requesting that the Federal Actions

1 be stayed in favor of the litigation of the derivative actions in the Superior Court;

2 WHEREAS, on January 5, 2005, the Court entered an Order staying the Federal Actions;

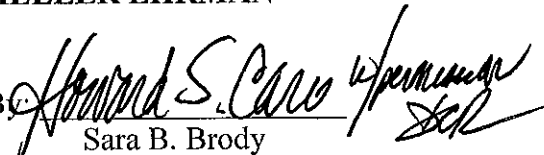
3 WHEREAS, the State Actions proceeded to be litigated, and after two and one-half years
4 of litigation, the parties reached a settlement of the State Actions, as embodied in the Stipulation
5 of Settlement of Derivative Claims (the "Settlement"), in *In Re Netopia Derivative Litigation*,
6 Superior Court of The State of California, Alameda County, Case No. RG04173560, so as to
7 fully and finally resolve the derivative actions brought on behalf of Netopia. The Settlement
8 provides, *inter alia*, for the immediate payment to Netopia of \$2 million on behalf of the
9 individual defendants. (A copy of the Stipulation is annexed hereto as Exhibit A.);

10
11 WHEREAS, on February 2, 2007 the Superior Court entered an Order and Final
12 Judgment in the State Actions approving the Settlement as fair, reasonable and adequate,
13 releasing the released parties from the released claims, and retaining jurisdiction over "all
14 matters related to the administration, consummation and enforcement of the terms of the
15 Stipulation". (A copy of the Order and Final Judgment as entered is annexed hereto as Exhibit
16 B.);

17
18 THEREFORE, in light of the resolution of the State Actions, the parties hereby stipulate
19 to the voluntary dismissal, with prejudice, of the Federal Actions, and request the Court to enter
20 an Order of dismissal.

21
22 So Stipulated:

23
24 **HELLER EHRMAN**

25 
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27 Howard S. Caro

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ORDER

FOR GOOD CAUSE APPEARING, it is Ordered that the above captioned actions are hereby dismissed with prejudice to their re-filing, and the Clerk is directed to enter Judgment without costs to any party.

Dated: 3/14/07


Hon. Ronald M. Whyte
United States District Judge